

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS - DALLAS DIVISION**

LEXOR MANUFACTURING, LLC	§	
Plaintiff/Counter-Defendant,	§	Case No. 3:18-CV-01933-S
	§	
v.	§	
	§	JURY TRIAL DEMANDED
LURACO, INC. AND LURACO	§	
HEALTH & BEAUTY, LLC,	§	
Defendants/Counter-Plaintiffs.	§	

COUNTER-PLAINTIFFS' MOTION TO ADD CROSS DEFENDANT
(BRIEF INCORPORATED)

COMES NOW Counter-Plaintiff Luraco Health & Beauty, LLC (“Luraco”) to seek leave to add Ecojet, Inc. as a cross-defendant, which requires an amendment or exception to this Court’s Scheduling Order (Doc. 27, “Order”).

SUMMARIZING, pursuant to Rule 14(a)(1) and 20(a)(2), this proposed amendment will add Ecojet, LLC (“Ecojet”) as a new cross-defendant, which will be aligned to Lexor Manufacturing, LLC (“Lexor”), as Lexor and Ecojet have shared ownership, manufacturing, and sales channels.

As this request is beyond the December 10, 2020 deadline to add parties, Luraco seeks this Court’s leave to add Ecojet one month later than the based on good cause and to efficiently adjudicate the ongoing dispute between these two commercial competitors.

LEGAL AUTHORITY and FACTUAL BACKGROUND

1. On September 11, 2020, this Court issued a Scheduling Order (Doc. 27) which provided a deadline of 90 and 180 days from the Order to join new parties and amend pleadings under Rule 15(a), setting the deadlines at December 10, 2020, and March 10, 2021, respectively.

2. The initial deadline of 90 days was not calendared properly, leading to this motion to amend being filed one month late. The intention was to be efficient and file both the motion to amend and join the new cross-defendant with the same amended complaint. (The deadline to amend pleadings remains two months away, but is expected to be filed with a motion to amend within two weeks.)

A. The proposed counterpetition complies with the Court's Order.

3. Aside from adding Ecojet, LLC as a cross-defendant, the proposed amended counter-complaint will add additional patents to the dispute and is within the expectations of the Court as it issued the Scheduling Order.

4. As a reminder, this case was abated for some time while the USPTO adjudicated a challenge to one of the plaintiff's patents. The Court's Order giving the deadlines was in part based on feedback that one or both parties could be expected to update their pleadings after that adjudication.

5. Luraco expects to ask this Court to allow the counter-claim amendment as an expected part of this case under Rule 15(a)(2), as leave to amend should be

freely given when justice so requires, and disallowing this amendment would result in a highly inefficient series of suits. However, this motion is brought only to allow the additional cross-defendant, so the upcoming pleading will not include a party that is not yet allowed to be joined.

B. Good cause supports Luraco's motion to bring new defendant Ecojet.

6. Luraco seeks this Court's leave to include Ecojet, LLC as a cross-defendant in this case. The facts will show that Lexor and Ecojet are both owned by Christopher Luong. The two organizations use common manufacturing and sales channels, and at this moment, Lexor is selling Ecojet products in Texas.

7. Luraco will seek the same infringement claims against Ecojet and Lexor.

8. Counsel for Lexor has also represented Ecojet in previous suits by Ecojet against Luraco and the parties' counsel previously discussed addition of Ecojet to the suit. Conference has been sought, but no response yet obtained.

9. The other approach to resolving this matter is for Luraco to file a separate suit and move for consolidation - a significantly slower and less efficient resolution than joinder now.

10. Additionally, infringement contentions concerning Lexor will be equally valid to Ecojet's products. Infringement contentions have yet to be served by the parties, which have agreed to such production no later than January 29.

11. Though the deadline to file this motion was a month ago, the parties have performed no task in this case that is damaged in any way, particularly when considering that the parties agreed to forestall infringement contention service until January 29, 2021, and the holiday season was in the middle of the delay.

SUMMARY AND PRAYER

As stated above, Lxor/Ecojet will not be materially Luraco asks that the Court grant leave to join Ecojet, Inc. in this suit as a cross-defendant, to be included as such in its next amended petition filed within the next two weeks, and grant any other relief the Court deems appropriate.

Respectfully Submitted,

/s/ Warren V. Norred

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CERTIFICATE OF CONFERENCE - I hereby certify that sent an email to Jeff Grant, counsel for Lxor, and then called him via phone twice to seek conference on this matter. I will continue to attempt contact to resolve this request and update this certificate of service when such contact is made. - s/Warren V. Norred/

CERTIFICATE OF SERVICE - I hereby certify that I electronically filed the foregoing with the Clerk of the Court on January 11, 2021 using the CM/ECF system which will send notification of such filing to the Electronic Service List for this Case, which includes the following:

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Attorneys for Plaintiff Lxor Manufacturing, LLC